

AMENDED IN SENATE APRIL 18, 2006

AMENDED IN SENATE MARCH 30, 2006

SENATE BILL

No. 1205

Introduced by Senator Escutia

January 25, 2006

An act to amend Sections 39674, 42400, 42400.1, 42400.2, 42400.3.5, 42400.7, 42401, 42402, 42402.1, 42402.2, and 42402.4 of, to add Sections 39604.3 and 42409.5 to, and to repeal Section 42400.4 of the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 1205, as amended, Escutia. Air pollution: Children's Breathing Rights Act: penalties.

(1) Existing law vests local and regional authorities, defined as the governing body of any city, county, or air pollution control district or air quality management district with the primary responsibility for control of air pollution from all sources other than vehicular sources. Existing law establishes maximum criminal and civil penalties for any person, as defined, for violations of air pollution laws from nonvehicular sources. Existing law defines a Title V source as a stationary source required by federal law to be included in an operating permit program established pursuant to Title V of the federal Clean Air Act.

This bill would create the Children's Breathing Rights Act, which would increase the maximum penalties for specified violations of air pollution laws from nonvehicular sources to \$10,000, and to \$50,000 in the case of Title V sources, as provided. The bill would, on and after June 1, 2007, assess an additional civil penalty of not more than \$100,000 per day for each violation committed by a serious—and

chronic violator of nonvehicular air pollution laws, as defined. The bill would require that at least 10% of all penalties and settlements collected by the state board and the air districts from violators of specified laws regulating air pollution be deposited into the Children's Breathing Rights Fund, which would be created by the bill, to be used, upon appropriation, for specified purposes.

Because this bill would add new crimes this bill would create a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known, and may be cited, as
2 the Children's Breathing Rights Act.

3 SEC. 2. (a) The Legislature finds and declares all of the
4 following:

5 (1) Breathing clean and healthy air is a right of all
6 Californians, especially our children, whose health suffers
7 disproportionately when our air is polluted.

8 (2) Reduced lung growth and function, new asthma cases,
9 respiratory complications for asthmatics, and increased school
10 absences from respiratory illnesses are just some of the
11 consequences our children face if we fail to protect that right.

12 (3) The most recent available state and federal data reveal that
13 more than 245 million pounds of industrial air pollution were
14 emitted near California schools in 1995. Statewide, more than 2.8
15 million children were enrolled in schools located near reported
16 air emissions of carcinogens, reproductive toxins, heavy metals,
17 nitrogen oxides, sulfur dioxide, or particulate matter.

18 (4) Because air quality management districts and air pollution
19 control districts settle most violations in administrative hearings,
20 records of violations are not always kept at the local district level
21 and the districts thus have incomplete compliance histories.

Moreover, the state board is currently statutorily required to post, on its Internet Web site, only summary information every two years. Publicly accessible information regarding air pollution is therefore inadequate.

(5) If we improve the enforcement of our air quality laws and ensure that penalties are not so low as to be a minor inconvenience to a serious-~~and-chronic~~ air polluter, our children's right to clean and healthy air can be better protected, as can the right to environmental justice provided in Section 65040.12 of the Government Code, that is, the fair treatment of people of all races, cultures, and income with respect to the enforcement of environmental laws, regulations, and policies. If we improve the enforcement of our air quality laws, we will avoid future economic and social costs of air pollution.

(b) It is the intent of the Legislature to increase penalties for serious-~~and-chronic~~ violators of air pollution laws and to use enhanced penalties to improve air pollution enforcement activities, to create a statewide database that would provide transparency regarding violations, including serious-~~and-chronic~~ violations, to help fund local children's health initiatives, and to help fund asthma prevention activities in schools and local communities.

SEC. 3. Section 39604.3 is added to the Health and Safety Code, to read:

39604.3. (a) Notwithstanding Section 39604, the state board shall post on its Internet Web site, at a minimum by January 1 of each year, information on air quality violations in each district that have occurred since the last annual report.

(b) The data shall include, but not be limited to, all of the following:

- (1) The district where the violation occurred.
- (2) The name of the source, owner, or operator against whom or which a penalty was assessed.
- (3) The section of law or regulation found to have been violated.
- (4) The number of days the violation occurred.
- (5) The total dollar amount of the civil penalty assessed.
- (6) The amount of any fine and the length of any imprisonment imposed as a criminal penalty.

1 (7) Whether any air district hearing board granted the violating
2 facility a variance, the duration of any variance, and whether
3 final compliance has been achieved.

4 (8) The issuance of orders for abatement, hearing board
5 findings, settlement agreements, consent decrees, and consent
6 agreements.

7 SEC. 4. Section 39674 of the Health and Safety Code is
8 amended to read:

9 39674. (a) Except as otherwise provided in subdivision (b)
10 or, any person who violates any rule or regulation, emission
11 limitation, permit condition, order, fee requirement, filing
12 requirement, duty to allow or carry out inspection or monitoring
13 activities, or duty to allow entry for which delegation or approval
14 of implementation and enforcement authority has been obtained
15 pursuant to subdivision (l) of Section 112 of the Clean Air Act
16 (42 U.S.C. Section 7412(l)) or the regulations adopted pursuant
17 thereto, adopted pursuant to Section 39659 or Article 4
18 (commencing with Section 39665) or which is implemented and
19 enforced as authorized by subdivision (b) of Section 39658 is
20 strictly liable for a civil penalty not to exceed ten thousand
21 dollars (\$10,000) for each day in which the violation occurs.

22 (b) Any person who violates any rule or requirement, emission
23 limitation, permit condition, order, fee requirement, filing
24 requirement, duty to allow or carry out inspection or monitoring
25 activities, or duty to allow entry for which delegation or approval
26 of implementation and enforcement authority has been obtained
27 pursuant to subdivision (l) of Section 112 of the federal Clean
28 Air Act (42 U.S.C. Section 7412(1) or the regulations adopted
29 pursuant thereto, adopted pursuant to Section 39659 or Article 4
30 (commencing with Section 39665), or which is implemented and
31 enforced as authorized by subdivision (b) of Section 39658 at a
32 Title V source is strictly liable for a civil penalty not to exceed
33 fifty thousand dollars (\$50,000) for each day in which the
34 violation occurs.

35 (c) Where a civil penalty in excess of one thousand dollars
36 (\$1,000) for each day of violation is sought, there is no liability
37 under subdivision (a) if the person accused of the violation
38 alleges by affirmative defense and establishes that the violation is
39 caused by an act that was not the result of intentional or negligent
40 conduct. In a district in which a Title V permit program has been

fully approved, this subdivision shall not apply to a violation of federally enforceable requirements that occurs at a Title V source.

SEC. 5. Section 42400 of the Health and Safety Code is amended to read:

42400. (a) (1) Except as otherwise provided in paragraph (2), or Section 42400.1, 42400.2, 42400.3, or 42400.3.5, any person who violates this part, or any rule, regulation, permit, or order of the state board or of a district, including a district hearing board, adopted pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars (\$10,000) or imprisonment in the county jail for not more than six months, or both.

(2) Notwithstanding paragraph (1) and except where a greater penalty is authorized by law, any person who violates this part, or any rule, regulation, permit, or order of the state board or of a district, including a district hearing board, adopted pursuant to Part 1 (commencing with Section 39000), Part 2 (commencing with Section 39500), Part 3 (commencing with Section 40000), or Part 4 (commencing with Section 41500) at a Title V source is guilty of a misdemeanor and is subject to a fine of not more than fifty thousand dollars (\$50,000) or imprisonment in the county jail for not more than one year, or both.

(b) If a violation under subdivision (a) with regard to the failure to operate a vapor recovery system on a gasoline cargo tank is directly caused by the actions of an employee under the supervision of, or of any independent contractor working for, any person subject to this part, the employee or independent contractor, as the case may be, causing the violation is guilty of a misdemeanor and is punishable as provided in subdivision (a). That liability shall not extend to the person employing the employee or retaining the independent contractor, unless that person is separately guilty of an action that violates this part.

(c) Except as provided in paragraph (2) of subdivision (a), any person who owns or operates any source of air contaminants in violation of Section 41700 that causes actual injury, as defined in subdivision (d), to the health~~and~~ or safety of a considerable number of persons or the public is guilty of a misdemeanor and is subject to a fine of not more than fifty thousand dollars (\$50,000)

1 or imprisonment in the county jail for not more than nine months,
2 or both.

3 (d) As used in this section, “actual injury” means any physical
4 injury that, in the opinion of a licensed physician and surgeon,
5 requires medical treatment involving more than a physical
6 examination.

7 (e) Each day during any portion of which a violation of
8 subdivision (a) or (c) occurs is a separate offense.

9 SEC. 6. Section 42400.1 of the Health and Safety Code is
10 amended to read:

11 42400.1. (a) Except as otherwise provided in paragraph (2)
12 of subdivision (a) of Section 42400, any person who negligently
13 emits an air contaminant in violation of this part or any rule,
14 regulation, permit, or order of the state board or of a district
15 pertaining to emission regulations or limitations is guilty of a
16 misdemeanor and is punishable by a fine of not more than
17 twenty-five thousand dollars (\$25,000), or imprisonment in the
18 county jail for not more than nine months, or both.

19 (b) Any person who negligently emits an air contaminant in
20 violation of Section 41700 that causes great bodily injury, as
21 defined by Section 12022.7 of the Penal Code, to, or death of,
22 any person, is guilty of a misdemeanor and is punishable by a
23 fine of not more than one hundred thousand dollars (\$100,000),
24 or imprisonment in the county jail for not more than one year, or
25 both.

26 (c) Each day during any portion of which a violation occurs is
27 a separate offense.

28 SEC. 7. Section 42400.2 of the Health and Safety Code is
29 amended to read:

30 42400.2. (a) Except as otherwise provided in paragraph (2)
31 of subdivision (a) of Section 42400, any person who emits an air
32 contaminant in violation of any provision of this part, or any
33 order, rule, regulation, or permit of the state board or of a district
34 pertaining to emission regulations or limitations, and who knew
35 of the emission and failed to take corrective action within a
36 reasonable period of time under the circumstances, is guilty of a
37 misdemeanor and is subject to a fine of not more than forty
38 thousand dollars (\$40,000), or imprisonment in the county jail for
39 not more than one year, or both.

(b) For purposes of this section, “corrective action” means the termination of the emission violation or the grant of a variance from the applicable order, rule, regulation, or permit pursuant to Article 2 (commencing with Section 42350). If a district regulation regarding process upsets or equipment breakdowns would allow continued operation of equipment which is emitting air contaminants in excess of allowable limits, compliance with that regulation is deemed to be corrective action.

(c) Any person who owns or operates any source of air contaminants in violation of Section 41700 that causes great bodily injury, as defined by Section 12022.7 of the Penal Code, to, or death of, any person, and who knew of the emission and failed to take corrective action within a reasonable period of time under the circumstances, is guilty of a misdemeanor and is subject to a fine of not more than two hundred fifty thousand dollars (\$250,000), or imprisonment in the county jail for not more than one year, or both.

(d) Each day during any portion of which a violation occurs constitutes a separate offense.

SEC. 8. Section 42400.3.5 of the Health and Safety Code is amended to read:

42400.3.5. (a) Except as otherwise provided in paragraph (2) of subdivision (a) of Section 42400, any person who knowingly violates any rule, regulation, permit, order, fee requirement, or filing requirement of the state board or of a district, including a district hearing board, that is adopted for the control of toxic air contaminants pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, and for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subdivision (I) of Section 112 of the federal Clean Air Act (42 U.S.C. Sec. 7412(I)), or the regulations adopted pursuant thereto, is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars (\$10,000) or imprisonment in the county jail for not more than six months, or both.

(b) Except as otherwise provided in paragraph (2) of subdivision (a) of Section 42400, any person who knowingly makes any false material statement, representation, or certification in any form or in any notice or report required by a rule or regulation adopted or permit issued for the control of

1 toxic air contaminants pursuant to Part 1 (commencing with
2 Section 39000) to Part 4 (commencing with Section 41500),
3 inclusive, and for which delegation or approval of
4 implementation and enforcement authority has been obtained
5 pursuant to subdivision (l) of Section 112 of the Clean Air Act
6 (42 U.S.C. Sec. 7412(l)), or the regulations adopted pursuant
7 thereto, or who knowingly renders inaccurate any monitoring
8 device required by that toxic air contaminant rule, regulation, or
9 permit is subject to a fine of not more than thirty-five thousand
10 dollars (\$35,000) or imprisonment in the county jail for not more
11 than nine months, or both.

12 (c) Except as otherwise provided in paragraph (2) of
13 subdivision (a) of Section 42400, any person who, knowingly
14 and with intent to deceive, falsifies any document required to be
15 kept pursuant to any provision of this part, or any rule,
16 regulation, permit, notice to comply, or order of the state board
17 or of a district, is punishable as provided in subdivision (b).

18 SEC. 9. Section 42400.4 of the Health and Safety Code is
19 repealed.

20 SEC. 10. Section 42400.7 of the Health and Safety Code is
21 amended to read:

22 42400.7. (a) The recovery of civil penalties pursuant to
23 Section 39674, 42401, 42402, 42402.1, 42402.2, or 42402.3
24 precludes prosecution under Section 42400, 42400.1, 42400.2,
25 42400.3, 42400.3.5, or 42400.4 for the same offense. When a
26 district refers a violation to a prosecuting agency, the filing of a
27 criminal complaint is grounds requiring the dismissal of any civil
28 action brought pursuant to this article for the same offense.

29 (b) If the pending civil action described in subdivision (a)
30 includes a request for injunctive relief, that portion of the civil
31 action shall not be dismissed upon the filing of a criminal
32 complaint for the same offense.

33 SEC. 11. Section 42401 of the Health and Safety Code is
34 amended to read:

35 42401. Except as otherwise provided in ~~paragraph (2) of~~
36 ~~subdivision (a) of Section 42400~~ *subdivision (b) of Section*
37 *42402*, any person who intentionally or negligently violates any
38 order of abatement issued by a district pursuant to Section 42450,
39 by a hearing board pursuant to Section 42451, or by the state
40 board pursuant to Section 41505, is liable for a civil penalty of

1 not more than twenty-five thousand dollars (\$25,000) for each
2 day in which the violation occurs.

3 SEC. 12. Section 42402 of the Health and Safety Code is
4 amended to read:

5 42402. (a) Except as provided in Sections 42402.1, 42402.2,
6 42402.3, and 42402.4, any person who violates this part, any
7 order issued pursuant to Section 42316, or any rule, regulation,
8 permit, or order of a district, including a district hearing board, or
9 of the state board issued pursuant to Part 1 (commencing with
10 Section 39000) to Part 4 (commencing with Section 41500),
11 inclusive, is strictly liable for a civil penalty of not more than ten
12 thousand dollars (\$10,000).

13 (b) Notwithstanding subdivision (a) and except where a
14 greater penalty is authorized by law, any person who violates this
15 part, any order issued pursuant to Section 42316, or any rule,
16 regulation, permit, or order of a district, including a district
17 hearing board, or of the state board issued pursuant to Part 1
18 (commencing with Section 39000), Part 2 (commencing with
19 Section 39500), Part 3 (commencing with Section 40000), or Part
20 4 (commencing with Section 41500) at a Title V source is strictly
21 liable for a civil penalty in an amount not more than fifty
22 thousand dollars (\$50,000).

23 (c) (1) Except as specified in paragraphs (2) and (3), if a civil
24 penalty in excess of one thousand dollars (\$1,000) for each day
25 in which a violation occurs is sought, there is no liability under
26 subdivision (a) if the person accused of the violation alleges by
27 affirmative defense and establishes that the violation was caused
28 by an act that was not the result of intentional nor negligent
29 conduct.

30 (2) This subdivision does not apply to a violation of federally
31 enforceable requirements that occur at a Title V source in a
32 district in which a Title V permit program has been fully
33 approved.

34 (3) This subdivision does not apply to a person who is
35 determined to have violated an annual facility emissions cap
36 established pursuant to a market-based incentive program
37 adopted by a district pursuant to subdivision (b) of Section
38 39616.

39 (d) Any person who owns or operates any source of air
40 contaminants in violation of Section 41700 that causes actual

1 injury, as defined in subdivision (d) of Section 42400, to the
2 health and safety of a considerable number of persons or the
3 public, is liable for a civil penalty of not more than fifty thousand
4 dollars (\$50,000).

5 (e) Each day during any portion of which a violation occurs is
6 a separate offense.

7 SEC. 13. Section 42402.1 of the Health and Safety Code is
8 amended to read:

9 42402.1. (a) Except as otherwise provided in subdivision (b)
10 of Section 42402, any person who negligently emits an air
11 contaminant in violation of this part or any rule, regulation,
12 permit, or order of the state board or of a district, including a
13 district hearing board, pertaining to emission regulations or
14 limitations is liable for a civil penalty of not more than
15 twenty-five thousand dollars (\$25,000).

16 (b) Any person who negligently emits an air contaminant in
17 violation of Section 41700 that causes great bodily injury, as
18 defined by Section 12022.7 of the Penal Code, to any person or
19 that causes the death of any person, is liable for a civil penalty of
20 not more than one hundred thousand dollars (\$100,000).

21 (c) Each day during any portion of which a violation occurs is
22 a separate offense.

23 SEC. 14. Section 42402.2 of the Health and Safety Code is
24 amended to read:

25 42402.2. (a) (1) Except as otherwise provided in subdivision
26 (b) of Section 42402, any person who emits an air contaminant in
27 violation of any provision of this part, or any order, rule,
28 regulation, or permit of the state board or of a district, including
29 a district hearing board, pertaining to emission regulations or
30 limitations, and who knew of the emission and failed to take
31 corrective action, as defined in subdivision (b) of Section
32 42400.2, within a reasonable period of time under the
33 circumstances, is liable for a civil penalty of not more than forty
34 thousand dollars (\$40,000).

35 (b) Any person who owns or operates any source of air
36 contaminants in violation of Section 41700 that causes great
37 bodily injury, as defined by Section 12022.7 of the Penal Code,
38 to any person or that causes the death of any person, and who
39 knew of the emission and failed to take corrective action, as
40 defined in subdivision (b) of Section 42400.2, within a

1 reasonable period of time under the circumstances, is liable for a
2 civil penalty not to exceed two hundred fifty thousand dollars
3 (\$250,000).

4 (c) Each day during any portion of which a violation occurs is
5 a separate offense.

6 SEC. 15. Section 42402.4 of the Health and Safety Code is
7 amended to read:

8 42402.4. Except as otherwise provided in subdivision (b) of
9 Section 42402, any person who knowingly and with intent to
10 deceive, falsifies any document required to be kept pursuant to
11 any provision of this part, or any rule, regulation, permit, or order
12 of the state board or of a district, including a district hearing
13 board, is liable for a civil penalty of not more than thirty-five
14 thousand dollars (\$35,000).

15 SEC. 16. Section 42409.5 is added to the Health and Safety
16 Code, to read:

17 42409.5. (a) On and after June 1, 2007, any serious-and
18 ~~chronic~~ violator shall be liable for a civil penalty of not more
19 than one hundred thousand dollars (\$100,000) per day for each
20 violation described by this article, in addition to any other
21 penalty prescribed by this article.

22 (b) For the purposes of this section, “serious-and-chronic
23 violator” includes, but is not necessarily limited to, any person
24 who does any of the following:

25 (1) Purposely or knowingly disconnects or disables any
26 monitoring device or method required by an operating permit.

27 (2) Purposely or knowingly makes any false material
28 statement, representation, or certification in any form, notice,
29 statement, or report required in connection with a permit.

30 ~~(3) Commits any one or more of the following high priority~~
31 ~~violations, as that term is used in relation to the federal Clean Air~~
32 ~~Act (42 U.S.C. Sec. 7401, et seq.):~~

33 ~~(A) Fails to obtain a prevention of significant deterioration~~
34 ~~permit.~~

35 ~~(B) Violates an air toxic requirement that either results in~~
36 ~~excessive emissions or violates operating parameter restrictions.~~

37 ~~(C) Violates an emissions limit.~~

38 ~~(D) Violates any substantive term of an administrative or~~
39 ~~judicial order.~~

1 ~~(E) Commits substantial violations of a source's Title V~~
2 ~~obligations.~~

3 ~~(F) Fails to submit a Title V permit application within 60 days~~
4 ~~of the deadline.~~

5 ~~(G) Commits testing, monitoring, reporting, or record keeping~~
6 ~~violations that substantially interfere with enforcement or a~~
7 ~~determination of a facility's compliance requirements.~~

8 ~~(H) Violates an allowable emission limit detected during a~~
9 ~~source test.~~

10 ~~(I) Commits substantial violations of the requirements of~~
11 ~~subdivision (r) of Section 112 of the federal Clean Air Act (42~~
12 ~~U.S.C. Sec. 7412(r)).~~

13 *(3) Commits one or more high priority violations pursuant to*
14 *the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.). For*
15 *purposes of this paragraph, "high priority violation" means an*
16 *act that is a high priority violation under the high priority*
17 *violation policy of the United States Environmental Protection*
18 *Agency, as set forth in "THE TIMELY AND APPROPRIATE*
19 *(T&A) ENFORCEMENT RESPONSE TO HIGH PRIORITY*
20 *VIOLATIONS (HPVs)" issued in December of 1998, and the*
21 *EPA Office of Enforcement and Compliance Assurance*
22 *"WORKBOOK: The Timely and Appropriate (T&A) Enforcement*
23 *Response to High Priority Violations (HPVs)," issued June 23,*
24 *1999.*

25 (c) At least 10 percent of all penalties and settlements
26 collected by the state board and the air districts from violators of
27 any provision of this division shall be deposited into the
28 Children's Breathing Rights Fund, which is hereby created in the
29 State Treasury. Moneys in the fund shall be available, upon
30 appropriation by the Legislature, for all of the following
31 purposes:

32 (1) Twenty-five percent shall be allocated to the *state board or*
33 *district where the penalty was assessed for enhanced enforcement*
34 *activities in the district within close proximity to where those*
35 *violations occurred, including monitoring and reporting the*
36 *development of pollution control technology, providing*
37 *assistance to serious-and-chronic air polluters, and developing*
38 *and maintaining on the state board's Internet Web site a*
39 *searchable database containing, at a minimum, the information*
40 *specified in Section 39604.3.*

1 (2) Fifty percent shall be allocated to local children's health
2 initiatives in the district where the penalty was assessed to ensure
3 basic health coverage, including asthma services in schools and
4 communities. If there is no local children's health initiative in the
5 district where the penalty was assessed, the allocation shall be
6 made to the California Healthy Kids Insurance Program,
7 established by Senate Bill 437 of the 2005–2006 Regular Session
8 of the Legislature.

9 (3) Twenty-five percent shall be allocated to the appropriate
10 local, city, or county agencies to ensure that the most egregious
11 violators of this division are prosecuted for their violations.

12 (d) On or before January 1, 2008, and annually thereafter, the
13 state board shall submit a report to the Legislature summarizing
14 the enforcement of this article, including auditing by the state
15 board of enforcement activities by district.

16 SEC. 17. No reimbursement is required by this act pursuant
17 to Section 6 of Article XIII B of the California Constitution
18 because the only costs that may be incurred by a local agency or
19 school district will be incurred because this act creates a new
20 crime or infraction, eliminates a crime or infraction, or changes
21 the penalty for a crime or infraction, within the meaning of
22 Section 17556 of the Government Code, or changes the
23 definition of a crime within the meaning of Section 6 of Article
24 XIII B of the California Constitution.